



Order 98-10-12
Served Oct. 13, 1998

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 9th day of October, 1998

Application of

**IBERIA LINEAS AEREAS DE
ESPAÑA, S.A.**

for an exemption from Subparts K and S of Part 93
of Title 14, Code of Federal Regulations pursuant
to 49 U.S.C. § 41714(b)(1)

Docket OST-98-4429

ORDER GRANTING EXEMPTION

APPLICATION

On September 8, 1998, Iberia Lineas Aereas de España, S.A. (Iberia) requested an exemption from 14 C.F.R. Part 93, Subparts K and S, under 49 U.S.C. § 41714(b)(1), to the extent necessary to enable it to conduct a single, nonstop, round-trip flight per day between Madrid, Spain and Chicago, Illinois (O'Hare International Airport), using Airbus A340 equipment (a Stage 3 aircraft) for the 1998/99 winter season.¹ Iberia requests one slot exemption to accommodate an O'Hare arrival at 2:05 P.M. and one slot exemption for a proposed O'Hare departure at 4:55 P.M. By Order 98-6-8 the Department granted Iberia an exemption to provide the above described service for the 1998 summer season.² An answer in support of the application has been filed by the City of Chicago (Chicago). No answers in opposition to the application have been filed.

In support of its request, Iberia states that it had made a timely request for additional slots with the Federal Aviation Administration (FAA) on May 14, 1998 for the 1998/99 winter season, but by letter dated August 20, 1998 the FAA notified the carrier that its request, along with those of other carriers, exceeded the number of slots that FAA could allocate.³ Iberia reiterates many of the same arguments made in its exemption application for the summer 1998 season. It asserts that its O'Hare slot exemption request is similar to those of other foreign carriers recently approved by the Department; that its summer season service has been successful and has improved service quality in the Madrid-Chicago market; and that the public benefits of its current services should be

¹ The winter season begins October 25, 1998 and ends April 3, 1999.

² The summer season ends October 24, 1998.

³ In June 1998, the FAA notified Iberia that the carrier's request for two slots was likely to be denied due to the number of new requests that had been received from other carriers.

continued. Iberia contends that grant of the slot exemptions would be consistent with the Department's finding in Order 90-3-9, in which it granted Iberia a foreign air carrier permit, that provision of service in the Madrid-Chicago market was in the public interest. Iberia also argues that approval of its request is authorized by the U.S.-Spain bilateral agreement.

Chicago states that Iberia's current Madrid-Chicago service is the only nonstop service between the Iberian Peninsula and O'Hare and that air service between Madrid and points west of the U.S. Eastern seaboard is very limited.

STATUTORY BACKGROUND

Subparts K and S of 14 C.F.R. Part 93 designate Chicago's O'Hare International Airport, New York's John F. Kennedy International and LaGuardia Airports, and Ronald Reagan Washington National Airport (National) as high density traffic airports and prescribe certain air traffic rules for the operation of aircraft at these airports. These regulations limit the number of allocated Instrument Flight Rule (IFR) operations (takeoffs and landings) for specified classes of users during certain periods of the day.

Pursuant to 49 U.S.C. § 41714(b)(1), the Secretary of Transportation may, by order, grant exemptions from the requirements of Subparts K and S of 14 C.F.R. Part 93 (pertaining to slots at high density airports other than National), to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft, if he finds such action to be in the public interest.

DECISION

We will grant Iberia an exemption to enable it to perform one daily Madrid-Chicago scheduled flight arrival and one daily departure at O'Hare during the 1998/99 summer season. As we found in Order 98-6-8, grant of this exemption authority is consistent with the public interest.

Grant of this application is also consistent with the objectives of the U.S.-Spain bilateral air services agreement, which contemplates reasonable access to the market for carriers of either nation.

In reaching our decision, we recognize that Iberia filed a timely request with the FAA for these additional slots, and that due to hourly slot constraints the FAA has not been able to accommodate the applicant's request within the requested time frames. Moreover, we note that aviation relations with Iberia are governed by the U.S.-Spain Air Transport Services Agreement, which provides for the proposed Madrid-Chicago service, and Iberia has been properly authorized by its government to provide scheduled foreign air transportation in the Madrid-Chicago market.⁴

As we have recently affirmed,⁵ while 49 U.S.C. § 41714(b)(1) provides the Department with discretionary authority to grant slot exemptions for foreign air transportation at a high density

⁴ While our findings in this matter will allow for the continuation of improved services in the Madrid-Chicago market, we emphasize that airline requests for exemption authority will be decided by the Department on a case-by-case basis.

⁵ See Orders 98-6-8 at 3 and 98-8-26 at 3.

airport, we do not view this authority as a substitute mechanism for the slot-allocation procedures outlined in Subpart S of 14 C.F.R. Part 93. We fully expect air carriers and foreign air carriers to follow and exhaust all appropriate procedures for slot acquisition, including all appropriate industry practices for slot acquisition, before filing a slot exemption request with the Department. In this case, Iberia followed those standard slot-allocation procedures.

Since grant of this exemption authority is dependent upon the applicant's existing U.S.-Spain operating authority, we attach the condition that this exemption authority be used only in the provision of Iberia's scheduled service between Madrid and Chicago O'Hare. Furthermore, in accordance with the requirements of the statute, all aircraft operations performed under this exemption shall be conducted by Stage 3 aircraft. We also note that grant of this exemption provides Iberia with only a temporary slot allocation at O'Hare Airport and does not confer to the applicant any ability to sell, trade, transfer, or convey this exemption authority.

This Order is issued under authority delegated in 49 C.F.R. 1.56(l).

ACCORDINGLY,

1. The Department grants a temporary exemption from 14 C.F.R. Part 93, Subparts K and S under 49 U.S.C. 41714(b)(1) to Iberia Lineas Aereas de España, S.A. to the extent necessary to enable it to operate one daily scheduled arrival at Chicago's O'Hare International Airport between 1:45 P.M. and 2:14 P.M. (local time) and one daily scheduled departure at Chicago's O'Hare International Airport between 4:45 P.M. and 5:14 P.M. (local time) in a pattern to be determined in consultation between Iberia Lineas Aereas de España, S.A. and the Slot Administration Office, FAA;
2. As a condition of approval, Iberia Lineas Aereas de España, S.A. may use this exemption authority only to provide scheduled service between Madrid, Spain, and the terminal point Chicago, Illinois (O'Hare International Airport);
3. As a further condition of approval, the Department directs that all aircraft operations granted under this exemption must be provided by Stage 3 aircraft;
4. The authority granted under this exemption is subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S;
5. We direct Iberia Lineas Aereas de España, S.A. to contact the Federal Aviation Administration's Slot Administration Office in order to determine the start-up date in consultation with that Office for the single exemption granted here. The Federal Aviation Administration will assign slot withdrawal numbers for the slot exemption times listed in ordering paragraph 1;
6. The temporary slot allocation provided for in ordering paragraph 1 above is effective commencing on October 25, 1998, and expires on April 3, 1999;
7. We will serve this order on the Ambassador of Spain in Washington, D.C.; the City of Chicago; Iberia Lineas Aereas de España, S.A., the Department of State (Office of Aviation Negotiations); and all other parties served with the application; and

8. We grant all motions to file otherwise unauthorized documents.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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